



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Federal Electric International, Inc.
File: B-232295.2
Date: December 21, 1988

DIGEST

1. Objections concerning the evaluation of proposals are without legal merit where they either are not supported by the record or do not concern matters which were significant to the final selection decision, and the selection of the awardee on the basis of its overall technical superiority and low risk notwithstanding its higher price is not objectionable where it is adequately explained in the evaluation documents and has not been shown to be unreasonable.
2. In order to conduct meaningful discussions the agency need not point out that offeror's technically acceptable approach was relatively less desirable than others received.
3. Attempts at political influence on behalf of the awardee do not warrant legal objection to the contract award where record fails to show that those attempts resulted in any action which unfairly affected the protester's competitive position.

DECISION

Federal Electric International, Inc. (FEI) protests the award of a contract to Bechtel National, Inc. under request for proposals (RFP) No. F19628-86-R-0155, issued by the Air Force for the production, installation and support of its Weapons Security and Storage System (WS3).^{1/} The protester alleges various improprieties with respect to the evaluation of proposals and the source selection decision.

We dismiss the protest in part and deny it in part.

^{1/} Another protest, B-232295, filed with respect to this award by Unidynamics/St. Louis, Inc., is the subject of a separate decision.

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FACTS

The RFP, which was issued on July 14, 1987, provided that the contractor would have total system responsibility for providing the WS3, including: the fabrication and modification of 437 weapons storage vaults 2/; the provision of vault electronics, code management, command control, communications and assessment subsystems; and the integration and installation of the system at 20 military bases in Europe and the Pacific area. The basic contract called for 75 vaults to be installed at two bases in Europe and included a number of other responsibilities, for example: first article testing; site surveys; the provision of considerable data, and prime mission equipment (PME) for installation at training bases. Contract options provided for the installation of the remaining 362 vaults at 18 other locations.

Award was to be made on a fixed-price basis to the offeror whose proposal was found to be most advantageous to the government based primarily on two areas of evaluation set forth in the RFP in descending order of importance: technical and cost/price. The technical area contained four subcategories: installation and integration approach, manufacturing ability and supportability and management.3/ In addition to providing that price would be evaluated inclusive of options, the RFP provided that cost would be examined in terms of realism, reasonableness and risk.

The procurement was conducted in accordance with agency formal source selection procedures for major acquisitions, which require, among other things, in-depth technical evaluations and detailed analyses of risk. Accordingly, offerors were advised that, in addition to an evaluation of the proposals and preaward surveys, the Air Force would conduct Manufacturing Management/Production Capability Reviews (MM/PCRs) as well as independent, executive in-plant reviews, known as "Grey Beard" reviews. Also, offerors were specifically instructed to identify in detail perceived

2/ Amendment 0005, issued March 29, 1988, in response to changed North Atlantic Treaty Organization (NATO) requirements for different size weapons in the wake of the recent Intermediate Nuclear Forces treaty, required the successful offeror to redesign the vaults to enlarge them.

3/ Installation and integration approach, manufacturing ability and supportability, were all considered to be of equal importance and were ranked ahead of management.

risks associated with contract performance under their approaches, and to propose methods aimed at eliminating or reducing those risks under each of the subcategories in the technical evaluation area.

Seven proposals were received by the amended October 20 closing date. Following an initial technical evaluation, one offeror was eliminated from the competitive range. On the same day, clarification requests and deficiency reports were issued to the remaining six offerors; basic responses were received by December 2. Face-to-face negotiations were completed by December 23. The Grey Beard executive reviews were completed in mid-January; MM/PCRs were conducted with potential contractors and subcontractors from December through February, and a final report was issued on March 7. Best and final offers (BAFOs) were requested by letters dated June 9.

All six remaining offerors submitted BAFOs by June 20 as requested. Bechtel proposed Mannesmann, A.G. of West Germany as its vault fabricating subcontractor while FEI proposed Williams Fairey Engineering, Ltd. of Great Britain; both offerors proposed Sparton Technology as a subcontractor to fabricate electronics PME. The following is a summary of the final prices (in millions of dollars) submitted by the relevant offerors:

<u>Offeror</u>	<u>Basic Price</u>	<u>Options Price</u>	<u>Total Price</u>
Unidynamics	\$ 28.1	\$ 156.8	\$ 184.9
FEI	45.1	147.2	192.3
Bechtel	45.7	161.0	206.5

The Source Selection Evaluation Board (SSEB) completed its report on July 5, and briefed the Source Selection Advisory Council (SSAC) on July 6. In turn, the SSAC issued its report and briefed the Source Selection Authority (SSA) on July 8. The SSAC report marked the culmination of a lengthy technical and cost/price evaluation. Within the technical area, the subcategories listed in the RFP were analyzed. The SSAC considered each offeror's technical, schedule and cost risks. The results of a past/present performance analysis, the Grey Beard reviews, and the MM/PCRs were not factored into the SSAC analysis; they were separately presented to the SSA as "general considerations," as provided in the RFP.

The final SSAC report contained summary findings which ranked the proposals in terms of their overall advantage to the government and scored them in terms of acceptability and risk assessment as follows:

<u>Overall Rank</u>	<u>Offeror</u>	<u>Color Rating 4/</u>	<u>Risk Assessment</u>
1st	Bechtel	Green	Low
2nd	Unidynamics	Green	High
3rd	FEI	Green	Moderate

In the accompanying narrative, Bechtel's proposal was found to have no weaknesses or risks. Specific strengths were found under each of the technical evaluation subcategories. More specifically, in the final analysis Bechtel was credited by the SSAC with strengths for proposing: a production line approach to shipping PME in an already prepared kit with each vault, thus speeding construction time significantly (installation and integration approach subcategory); an excellent approach to the vault redesign and manufacture with redesign documents near completion (manufacturing subcategory); a 2-year warranty for all PME versus the 1-year required warranty (supportability subcategory); and a unique approach to problem solving where a "tiger team" with the authority to direct changes in order to solve immediate problems would be permanently assigned to the WS3 program manager for any program-related matters (management subcategory).

FEI was credited with one specific strength for proposing an escrow account for design disclosure packages of off-the-shelf vendor-supplied equipment (supportability subcategory). The SSAC found a specific weakness in the manufacturing subcategory because FEI had not proposed to test electronics PME at the subsystem level prior to shipping it to the installation sites. Risk in the manufacturing area was consequently assessed as moderate. The SSAC concluded based on its review of both the technical and price proposals that Bechtel should be ranked first and FEI third behind Unidynamics.

The Grey Beard final evaluation of Bechtel indicated that the reviewers believed the offeror to be "a good choice, if affordable." Specific strengths were found in the areas of program management, construction management and vault manufacturing. The one weakness found in Bechtel's initial proposal by the Grey Beards related to the need for an informed electronics integration program manager. As a result, Bechtel received an award rating of "very good." The Grey Beard evaluation of FEI concluded that the offeror "may be capable but risky." No specific strengths were

4/ Green indicates acceptable.

identified and a weakness was noted with respect to the protester's plan to install the vaults. As a result, FEI received an overall rating of "average."

The final MM/PCR analysis of Bechtel's vault manufacturing capabilities found that the risk presented "in producing a quality product on schedule is low"; in its conclusion, the MM/PCR team noted that Bechtel's proposed subcontractor had complete in-house machining capabilities and that its quality system was compatible with or exceeded the requirements of specification MIL-Q-9858A. With respect to the vault manufacturer proposed by FEI, Williams Fairey, the MM/PCR found that the "risk to the Government to produce equipment on schedule is moderate"; in its conclusion, the MM/PCR team noted that Williams Fairey had existing manufacturing capabilities but needed additional effort to improve in program and electrical areas--effort which was underway. With respect to Williams Fairey's quality assurance system, the MM/PCR concluded that it was not fully in compliance with the NATO equivalent of MIL-Q-9858A, and that until some planning as to how and when compliance would be met was presented, noncompliance presented a risk.

The SSA announced his selection of Bechtel in a decision document dated July 22. That document specifically referenced the foregoing analysis of proposals and stated that the decision was "predicated upon the evaluation criteria listed in the . . . RFP," noting that those criteria subordinated cost/price considerations to technical considerations. The document continued by stating that:

"The Bechtel proposal was selected because in the most important area, technical, Bechtel provided an excellent overall approach with low technical risk. Strong features of the proposal include: a credible vault redesign package already well started, an extended two-year warranty on all PME, and a good approach to shipping PME to installation sites. Moreover, in the cost/price area, Bechtel provided a realistic and reasonable price."

The SSA later expanded upon the rationale behind his selection in a July 29 memorandum.

Award was made on August 5. In a letter dated August 8 to FEI, the Air Force informed it that Bechtel had been selected. While not setting forth the specific rationale for Bechtel's selection the letter noted that FEI's proposal had been regarded as weak in two areas: PME

electronics testing and integration and the failure of its proposed vault manufacturing subcontractor to be in full compliance with MIL-Q-9858A.

PROTEST

FEI's protest is based on the premise that Bechtel's proposal was unreasonably upgraded and its proposal improperly downgraded during the evaluation. It is the protester's view that this was either the result of a poorly conducted selection process or political pressures exerted on behalf of Bechtel's proposed vault manufacturing subcontractor, Mannesmann, by the West German government.

FEI presents four basic arguments in support of its position that the award to Bechtel should be overturned: (1) the agency's evaluation of competing proposals was arbitrary and lacked a reasonable basis; (2) meaningful discussions were not conducted with respect to the protester's proposed approach to electronics PME testing; (3) the source selection decision lacked adequate justification and explanation; and (4) the award was tainted by improper political influence.

ANALYSIS

1. Arbitrary Evaluation of Proposals

FEI's argument in this regard consists of two parts--first it alleges that Bechtel's proposal was not properly evaluated; next, the protester argues that the Air Force erred in its assessment of risks and weaknesses associated with its own proposal.

In each of the areas raised by the protester concerning the evaluation of the proposals, we think the record reasonably supports the agency's conclusion--except possibly in the case of the location of the vault subcontractor--that the matters concerned were either genuine weaknesses or strengths in the relevant proposals. Nevertheless, we believe that it is important to bear in mind that, except for matters relating to FEI's intermediate testing, the issues raised by the protester here were not in our view critical to the actual selection of Bechtel over FEI--the third-ranked offeror. The selection decision itself is discussed later in the decision.

In general, in reviewing protests of this type, it is not the function of this Office to evaluate technical proposals or to resolve disputes over their scoring. Rather, we will

examine an agency's evaluation only to insure that it was fair and reasonable and consistent with the evaluation criteria stated in the RFP. The determination of the relative merits of proposals, particularly with regard to technical considerations, is primarily a matter of administrative discretion which we will not disturb unless it is shown to be arbitrary. Systems & Processes Engineering Corp., B-232100, Nov. 15, 1988, 88-2 CPD ¶ _____. A protester's disagreement with the agency's judgment is itself not sufficient to establish that the agency acted arbitrarily. Instruments & Controls Service Co., B-230799, June 6, 1988, 88-1 CPD ¶ 531.

a. Bechtel's Proposal

In its initial protest as supplemented, FEI raised three areas of concern relating to the evaluation of Bechtel's proposal: that an identified problem with the awardee's proposed electronics integration subcontractor, Contel Corporation, was overlooked or minimized by the Air Force; that Bechtel was improperly upgraded because of Mannesmann's proximity to West German installation sites for the WS3; and that the comparative credit received by Bechtel for proposing an extended warranty was improper because "FEI was not given an opportunity to propose . . . an extended warranty period." The Air Force addressed each of these matters in its agency report and FEI subsequently provided no rebuttal with respect to the alleged lack of opportunity to provide an extended warranty; thus, we will consider the issue abandoned, Telemechanics, Inc., B-229748, Mar. 24, 1988, 88-1 CPD ¶ 304, and our further consideration will be limited to the arguments relating to two of Bechtel's proposed subcontractors, Contel and Mannesmann.

(1) Contel

The protester begins by referring to a statement in the SSA's July 29 memorandum;

"The only negative element in Bechtel's approach appears in their plan to use Contel for electronic[s] integration. The greybeard team was concerned with the Contel manager's understanding of the job at hand. This area requires special emphasis, and I plan to make that very clear to Bechtel management."

The protester also refers to the summary in the SSEB report indicating that Contel was a marginal subcontractor with a history of cost overruns and technical problems which required the intervention of top-level management. FEI

concludes that since PME electronics integration is a critical aspect of the WS3 program, it was improper and unfair for the Air Force to overlook the problems with Contel by not attributing a weakness to Bechtel during the evaluation process while criticizing FEI harshly with respect to its approach to PME testing--only one aspect of the integration work.

Our review of the record indicates that the Air Force did not act unreasonably or unfairly in failing to downgrade Bechtel because of its choice of Contel as its PME subcontractor. While Contel was mentioned in the SSEB report, Bechtel's plan to use Contel was not identified as a specific weakness by the SSAC. This appears to be due to the fact that earlier concerns about the firm arose from the Grey Beard evaluation and the evaluation of past/present performance which were considered by the SSEB and separately reported to the SSA. In the final Grey Beard evaluation, concern was expressed over Contel's lack of an informed program manager; the team of reviewers nonetheless found Bechtel to be acceptable in the area of electronics integration in its overall analysis. The past/present performance analysis of Contel focused on two particular contracts. The firm's technical performance was found to be fully satisfactory with respect to one contract; for the other, Contel's technical performance was criticized for unspecified mid-management problems requiring upper-level intervention. Cost overruns were noted under both contracts.

All of these findings with respect to Contel were presented to the SSA, as was Bechtel's unique "tiger team" approach designed to ameliorate mid-level management problems by investing the team with authority to direct changes as problems arose. While the SSAC did not identify the use of Contel as either a weakness or a risk, it is clear from his statement that the SSA considered the problems with Contel in making his selection. In his judgment, those problems did not rise to the level of a weakness or risk in the overall assessment of Bechtel's proposal. Further, the past/performance analysis in the evaluation record found the protester itself to be a marginal overall performer with respect to two contracts and, with respect to a third, worth \$78 million, its cost reporting was found to be "very poor" with overruns still being determined. Based on these elements in the record, we do not agree that the SSA's overall assessment of Bechtel's proposal as it was impacted by the use of Contel as a subcontractor was unreasonable or unfair in comparison to the treatment accorded to the protester's proposal.

(2) Mannesmann's Proximity

Relying on a statement in the SSA's July 29 memorandum, FEI argues that no credit should have been given Bechtel for Mannesmann's proximity to the German installation sites because the protester's proposed vault manufacturing subcontractor, Williams Fairey, is also located in Europe near some of the prospective sites; the protester concludes that Mannesmann's location provides no support for the award to Bechtel.

There is nothing in the evaluation record concerning any offeror's proximity to the German installation sites, and there is no indication that the matter was significant to the final source selection decision. The only mention of this matter is the post-selection July 29 memorandum and it is clear that the SSA viewed the matter as only one feature of the Bechtel proposal that contributed to his overall conclusion that the awardee presented little or no schedule risk. Consequently, even if we were to agree with the protester that the proximity of its vault subcontractor is as valuable as that of Bechtel's subcontractor, we do not believe that would have a significant effect on the SSA's choice of the Bechtel proposal over the FEI proposal.

b. FEI's Proposal

As discussed earlier, the letter of August 8 informing FEI of the award to Bechtel cited two problems relating to the protester's proposal: risk attributed by reason of Williams Fairey's not being in compliance with quality assurance system specification MIL-Q-9858A; and a weakness and associated risk found by virtue of its failure to propose intermediate testing of electronics PME prior to shipment to the installation sites.

(1) MIL-Q-9858A

In its post-conference comments, FEI for the first time alleges that the RFP did not require subcontractor compliance with MIL-Q-9858A and concludes, therefore, that the Air Force's concerns about Williams Fairey's compliance were misplaced. There is no dispute that the RFP required the establishment, implementation and maintenance of a quality program in accordance with MIL-Q-9858A. MIL-Q-9858A itself provides:

"The contractor is responsible for assuring that all supplies . . . procured from his . . . subcontractors . . . conform to the contract requirements. . . . The contractor's

responsibility for the control of purchases . . . includes the establishment of a procedure for . . . the transmission [to its subcontractors] of applicable . . . quality requirements in [its] government contracts. . . ."

On August 18, 1987, 2 months before initial proposals were due, in response to a question from a potential offeror as to whether major subcontractors had to comply with MIL-Q-9858A, the contracting officer explained that subcontractors were required to meet the standards of that specification; both the written question and response were sent to FEI. The fact that they were not incorporated as RFP requirements in a formal amendment is not significant since other communications can operate to set forth government requirements even though they are not reflected in formal amendments. See Realty Ventures/Idaho, B-226167, May 18, 1987, 87-1 CPD ¶ 523. If there had been any reasonable doubt as to what the Air Force required of subcontractors before August 18, there was none after that date. Therefore, we find that the agency evaluators acted in accordance with the RFP by considering whether subcontractors were in compliance with MIL-Q-9858A.

Next, FEI argues that even if its subcontractor was required to comply with MIL-Q-9858A, there was no meaningful risk associated with noncompliance at the time of proposal evaluation because the areas in which the Air Force had doubts about Williams Fairey's compliance were insignificant and that full literal compliance could not, in fact, be achieved until after contract performance had begun.

We do not completely understand why the Air Force chose to emphasize the problems with MIL-Q-9858A, which concerned paragraph 3.6, Costs Related to Quality; paragraph 4.3, Production Tooling Used as a Media of Inspection; and paragraph 4.4, Use of Contractor's Inspection Equipment, in its notification of award letter dated August 8. These problems do not appear as a factor in the SSEB or SSAC analysis, nor were they mentioned in the SSA's selection documents. While the MM/PCR report concluded that a lack of complete compliance presented a moderate risk and noted the need for additional planning, we note that the degree of assigned risk was apparently due, at least in part, to other quality problems not directly involving MIL-Q-9858A such as Williams Fairey's lack of a material review board. Moreover, the initial Grey Beard report states that the subcontractor was "close to being compliant" and "nearly compliant" with MIL-Q-9858A although it did assess the risk associated with the remaining noncompliance to be "high."

The Grey Beards attributed little or no significance to the issue: "some small paper work changes required to meet MIL-Q-9858[A]." (Emphasis in the original.)

While it is clear that the protester disagrees with the agency's post-award assessment of the importance of the three areas of noncompliance, we are not convinced that the agency's judgment as far as the actual noncompliance itself is concerned is without a rational basis. Since, however, the SSEB, SSAC and the SSA did not mention the MIL-Q-9858A matter, we do not believe it was a significant element in the final selection.

(2) Intermediate PME Testing

The SSAC found FEI's proposal to present a moderate risk because the protester intended to perform subsystem level testing of electronics PME after the equipment had been delivered to the installation sites. In reviewing this approach as it was explained by FEI in its March 7 response to a clarification request dated February 22, the technical evaluators concluded that the proposed approach presented a moderate risk to the government because a lack of subsystem level testing jeopardized the system installation schedule proposed by FEI; noting that manufacture of the system electronics was crucial for the system to work properly, the evaluators observed that if the electronics were not tested as a subsystem until they were installed, the manufacturing process was not, in fact, complete.

FEI objects to this conclusion, submitting that its proposal was developed in strict accordance with the RFP requirements which specified testing programs and which did not require or even suggest the type of intermediate PME electronics testing presumably preferred by the evaluators. Thus, FEI concludes, in essence, that if the agency changed its mind with respect to testing after issuing the RFP, it was obligated to amend the RFP to reflect the change. In this connection, FEI cites Loral Terracom, et al., 66 Comp. Gen. 272 (1987), 87-1 CPD ¶ 182, where we sustained the protest of an unsuccessful, lower-priced offeror because, while it had proposed a technical approach in accordance with the RFP specification, the agency made award to an offeror proposing an alternative approach which was deemed to present less risk without informing all offerors that it preferred the alternative approach. Finally, FEI points out that, while the RFP permitted alternate approaches to design in the RFP, the RFP does not specifically allow alternate approaches to testing.

The protester is correct to the extent that it states that the RFP provisions relating to testing did not, per se, require intermediate PME subsystems testing prior to shipment; nonetheless, and contrary to FEI's suggestion, nothing in the RFP precluded an offeror from proposing such an approach. There is no dispute that intermediate testing could serve to minimize technical and schedule risks. We note that the RFP specifically advised offerors to identify potential technical risks and to propose solutions to resolve them. The RFP further advised offerors that the technical evaluation would place special emphasis on the conduct of system tests; moreover, offerors were advised that their proposals would be evaluated to see if they contained evidence that program requirements would be met.

This situation differs significantly from that in Loral Terracom, et al., B-224908, supra. In that case, the RFP contained numerous references to one specific technical approach that was required by the agency. Loral based its proposal on the RFP approach and was downgraded in relation to an alternate approach proposed by the awardee while the awardee's proposal was not in accordance with the detailed RFP specification. Here, as discussed above, FEI was free by the terms of the RFP to propose intermediate PME testing and in fact was encouraged to analyze and propose solutions to reduce the risks inherent in supplying these complex systems. It chose instead to strictly follow the minimum RFP requirements. For this it was rated as acceptable. There seems to be, however, little dispute as to the benefits in terms of risk reduction of intermediate subsystem level testing. Since FEI failed to identify the risks inherent in not having such testing and to propose a solution like intermediate testing to minimize those risks, we think it was reasonable and consistent with the RFP--which emphasized risk reduction in all areas--to have given a FEI a low but acceptable rating in this area. See Radiation Systems, Inc., B-222585.7, Feb. 6, 1987, 87-1 CPD ¶ 129.

2. Lack of Meaningful Discussions

FEI does not dispute that written discussions were conducted with respect to the issue of testing electronics PME subsystems for final integration prior to shipment to the installation sites. On February 22, the Air Force issued the following clarification request to the protester: "[p]lease provide details for the . . . test of the [e]lectronic[s] PME for final integration prior to shipment overseas" Rather, FEI argues that since the

discussions themselves did not identify any major risk associated with its proposed approach and since no deficiencies were found in its proposal at the conclusion of negotiations, it had apparently fully satisfied the agency. In view of this, and in light of the fact that its proposal was subsequently found to be risky for failing to propose intermediate testing, the protester argues that the discussions were not, in fact, meaningful.

The requirement for discussions includes advising offerors of deficiencies in their proposals and offering them the opportunity to satisfy the government's requirements through the submission of revised proposals. Furuno U.S.A., Inc., B-221814, Apr. 24, 1986, 86-1 CPD ¶ 400. Agencies are not, however, obligated to afford offerors all-encompassing discussions or to discuss every element of a technically acceptable proposal which has received less than the maximum possible rating. Bauer of America Corp. & Raymond International Builders, Inc., A Joint Venture, B-219343.3, Oct. 4, 1985, 85-2 CPD ¶ 380. Likewise, there is no requirement on the part of an agency to identify relative weaknesses in a proposal which is technically acceptable but presents a relatively less desirable approach than others received. See Prison Health Services, Inc., B-215613.2, Dec. 10, 1984, 84-2 CPD ¶ 643. Finally, the content and extent of discussions in a given case is a matter of judgment and not subject to question by our Office unless it is shown to be clearly arbitrary or without a reasonable basis. Id.

The Air Force's conclusion at the end of discussions that FEI had proposed an acceptable approach to PME electronics testing did not preclude the agency from downgrading that particular approach as not ideal from the standpoint of risk abatement. See Radiation Systems, Inc., B-222585.7, supra. Discussions on the subject were adequate in that they led FEI into the precise area of its proposal which presented concern to the Air Force. Fairchild Weston Systems, Inc., B-229568.2, Apr. 22, 1988, 88-1 CPD ¶ 394. Nothing else was required during discussions, and FEI was free to propose intermediate testing in its BAFO, having been fairly apprised that the agency was interested in the subject. FEI chose not to address the subject at its own risk.

3. Unjustified Selection Decision

FEI contends that the source selection documents and the underlying evaluation record do not specifically and adequately discuss or support the decision to make an award to Bechtel at a price far in excess of its own. In this

regard, the protester highlights several areas of alleged commonality between its proposal and Bechtel's and argues that the only actual advantage Bechtel offered over its proposal was an extended warranty--the cost of which FEI estimates to be far less than the price differential paid by the agency in accepting the awardee's proposal.

We disagree that the evaluation documents do not contain an adequate analysis of the technical/price tradeoff. While the SSA did not specifically set off a section of his selection decision for this purpose 5/, it is clear from both the SSAC evaluation report which the SSA relied on, and from the SSA's selection decision, that there was a clear recognition that the higher-priced Bechtel proposal was chosen because the SSA believed that the technical superiority was worth the additional cost.6/ For example, the source selection decision document specifically notes Bechtel's price, states that the firm provided an excellent overall technical approach with low risk, and concludes that award to Bechtel was in the best interest of the government. Moreover, the SSA's July 29 memorandum specifically mentions that, although not low by approximately 10 percent, Bechtel's price compared favorably to the independent government estimate for the project.

As far as the merits of the determination are concerned, we have held that the government is not required to make award to the firm offering the lowest price unless the RFP specifies that price will be the determinative factor. University of Dayton Research Institute, B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178. We have upheld awards to technically superior, higher-priced offerors where the record shows that such an offeror's price premium was justified in light of its technical superiority. Id. Our review is limited to

5/ Air Force Regulation 70-15, § 3-17, cited by FEI, was amended during the course of this procurement to express a preference for such an approach; we note, however, that the version originally applicable to the procurement does not require a separate statement.

6/ FEI complains that the agency did not specifically analyze the \$15 million difference between its proposal and that of Bechtel. This argument ignores that fact that FEI was ranked third overall after Unidynamics and proposed a higher price than Unidynamics. We do not think it would be reasonable to require that an agency consider the price technical trade-off between itself and any firm other than the next highest ranked offeror.

considering whether the source selection decision is rationally based and consistent with the stated evaluation criteria. The Earth Technology Corp., B-230980, Aug. 4, 1988, 88-2 CPD ¶ 113.

FEI's criticisms of the selection decision focus on selected similarities between its proposal and Bechtel's and do not consider the technical superiority that the SSAC found with respect to Bechtel's proposal--a factor which should properly be taken into account in making a technical/price tradeoff decision. The SSAC in its final assessment, while acknowledging that Bechtel's proposal was more expensive than some others, ranked Bechtel ahead of those offerors, not only because its proposal presented no risks, but also because of its technical superiority. With respect to the technical evaluation subcategory of installation and integration, Bechtel was ranked first and found to have "the most credible approach"; FEI was ranked third because it lacked any strengths or weaknesses. With respect to the subcategory of manufacturing, Bechtel's approach was found to be "excellent," while the protester's was found to have "misunderstandings" and was ranked fourth after Bechtel's. Under the subcategory of supportability, Bechtel was ranked equal with another offeror second only to Unidynamics for having proposed an extended warranty; FEI was ranked third and given credit for its proposed escrow account approach. Finally, with respect to the subcategory of management, Bechtel's approach was described as "unique"; all others were regarded as acceptable and ranked second to Bechtel's.

In sum, we find that while the protester's proposal did have certain features in common with Bechtel's, it is clear that the awardee was regarded as technically superior to FEI in every evaluation category. The selection of Bechtel over FEI was not made solely because of the two weaknesses identified in FEI's proposal or in spite of some alleged similarities between the proposals, but on the basis of the evaluators' overall assessment of the technical merit and risk associated with the two approaches. While clearly disagreeing with the evaluators and the SSA's assessment of the superiority of the awardee's approach, FEI has not shown that their judgment that the FEI proposal should have been ranked third behind both Unidynamics and Bechtel was not rationally based or adequately documented.

4. Improper Influence

The protester argues that the selection of Bechtel was influenced by pressure from West Germany. In this regard, the protester relies on correspondence such as a letter to the Secretary of Defense from his West German counterpart

expressing the importance of having a WS3 contractor with West German subcontractors, and an interagency Air Force document describing German pressures through NATO to accomplish the same end. The SSA admits that influence on behalf of Bechtel was apparently attempted; however, he has submitted an affidavit which states, in pertinent part, that:

"[a]ny decision was made in spite of--not because of the apparent attempts to influence the decision in favor of Bechtel. I considered those attempts improper, and wanted the record to clearly demonstrate that any decision was based solely on the Government's evaluation of the proposals submitted and source selection criteria set forth in the solicitation."

Noting that it also received "anti-Bechtel" political correspondence, the Air Force takes the position that the attempted influence was not atypical of major systems acquisitions and, in any event, that it did not affect the evaluation or award. Attempted political influence alone is insufficient to overturn a procurement decision unless it is shown that "bias translated into action that unfairly affected the protester's competitive position." Antenna Products Corp., B-228289, Jan. 19, 1988, 88-1 CPD ¶ 43.

Moreover, with respect to the final SSAC evaluation, the protester submits that one member of the SSAC was improperly contacted by another agency official regarding the possibility of awarding a contract to Bechtel. The communication of concern to FEI was sent on July 6, the day the SSEB briefed the SSAC. Our review of the document indicates that it was a background explanation of why, during recent NATO discussions, the West Germans had joined the French in expressing reservations about another procurement relating to the Icelandic Air Defense System (IADS). Following a "recap" of an opinion of a member of the United States Mission to NATO to the effect that Germany was using its position on the IADS to try to influence the WS3 procurement, the author states that he informed the NATO representative that "in a standard negotiated procurement, we do not have to award the contract to the lowest-priced, compliant bidder . . . that we can take into account other factors." The protester views this statement as an improper attempt to influence one member of the SSAC to get him to consider a factor extrinsic to the RFP--the nationality of proposed subcontractors. However, our review of the final SSAC report to the SSA prepared after July 6 discloses that the SSAC never considered this factor in its analysis.

Further, the SSAC's conclusion that Bechtel was the highest rated offeror was consistent with the earlier independent conclusion of the SSEB. Thus, even if the protester were correct in its characterization of the July 6 communication as an attempt to influence the SSAC, it appears from the record before us that no action prejudicial to FEI was taken as a result.

FEI also argues generally that the effect of the attempted influence is found in the irrationality of the evaluation and award decisions. Since we consider the evaluation to have been reasonable and the selection decision to have been rationally based and supported by the record in this matter, we find no merit to this aspect of the protest. In this regard, we think it is significant, as mentioned above, that Bechtel's proposal was ranked highest in all of the various evaluations conducted by three independent boards over a period of several months. The final SSA selection decision was consistent with the earlier evaluations. The protester does not even argue that the attempted influence extended beyond the SSA and the SSAC.

CONCLUSION

As indicated in the preceding discussion, we find no basis to object to the award to Bechtel. While both FEI and Unidynamics submitted acceptable proposals at lower prices than did Bechtel, agency evaluators at different levels and with different perspectives uniformly viewed Bechtel's proposal as technically superior to FEI's and Unidynamics', and the SSA determined that Bechtel should be selected for award notwithstanding its higher price. Selection officials, of course, have considerable discretion in deciding which offeror's proposal is most advantageous to the government, and while it is possible that another selection official could have viewed the relative rankings of the competitors differently and/or selected another offeror for award, we can properly object to the award decision here only if we find no rational basis for the decision or an inconsistency with the evaluation criteria. On the record before us, the protester simply has not shown, nor are we able to find, that the selection decision runs afoul of either test. Moreover, despite the attempted political influence on the award decision, our close

scrutiny reveals no indication that the decision was, in fact, the result of such influence.

The protest is dismissed in part and denied in part.


James F. Hinchman
General Counsel